

Appeal by Penobscot Forest, LLC

P. Andrew Hamilton
Direct Dial 207.992.4332
ahamilton@eatonpeabody.com



80 Exchange Street, P.O. Box 1210
Bangor, Maine 04402-1210
Phone 207.947-0111 Fax 207.942-3040
www.eatonpeabody.com

December 10, 2012

Mr. Robert A. Foley, Chair
Board of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

Re: Notice of Appeal of Penobscot Forest, LLC / Passadumkeag Wind Park, LLC
L-25597-24-A-N (denial) L-24597-TH-B-N (denial)

Dear Mr. Foley:

Enclosed please find a Notice of Appeal on behalf of Penobscot Forest, LLC in the above-captioned Passadumkeag Wind Park, LLC matter for your review.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Andrew Hamilton", written over a horizontal line.

P. Andrew Hamilton

Enclosures

cc: Patricia Aho, MDEP Commissioner
Katherine Joyce, Esq.

**STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION**

IN RE:

PASSADUMKEAG WIND PARK, LLC)
 Greenbush, Grand Falls Township,)
 Summit Mountain Township, Greenfield)
 Township)
 Penobscot County)
PASSADUMKEAG WIND PARK)
 L-25597-24-A-N (denial))
 L-24597-TH-B-N (denial))

**NOTICE OF APPEAL
OF PENOBSCOT FOREST, LLC**

SUMMARY

Penobscot Forest, LLC (herein the "Landowner" or "Penobscot Forest") submits this Notice of Appeal of the Commissioner's decision to deny a license for the Passadumkeag Wind Project (the "Project"). The Commissioner's Decision supports an approval of the Project on every applicable licensing standard, except for one: the Commissioner decided that this Wind Energy Project will have an unreasonable adverse effect on the scenic resource and uses associated with Saponac Pond. This limited denial decision adversely affects the Landowner.

Appellant Landowner owns 17,572 acres in the unorganized territory known as Grand Falls Township; these are private forest lands on the southern shore of Saponac Pond, within the viewshed towards Passadumkeag Mountain, and on Passadumkeag Mountain itself where the Project is sited. These lands continue to be actively and sustainably managed by professional land managers for multiple uses in a working forest landscape.

Penobscot Forest wants to assure fair, equal, and predictable application of licensing criteria to the Project on its lands, consistent with prior reviews of wind energy developments. When compared to those prior reviews (detailed below), it is clear as to both the number and configuration of turbines, that the Project is well within the norm for grid scale wind energy facilities already approved by the Department. These prior siting reviews adhered to the Wind

Energy Act's distinct scenic standard and criteria that acknowledge that wind turbines will be readily observable on mountain landscapes or ridges. It is on ridges that wind energy is typically captured. The Wind Energy Act thus tailors the "harmonious fit" and "high visibility" considerations otherwise applicable to large scale projects under the Site Law and NRPA scenic impact reviews of the Department. These prior reviews exhibit two other common characteristics-- an analysis confined to the Wind Energy Act's evaluation criteria and a process focused on strong and complete technical evaluations by peer review consultants experienced in scenic impact evaluations.

Adherence to the Wind Energy Act's distinct scenic standard and evaluation criteria is required by law. As a matter of fair and consistent application of policy to support a strong business and landowner environment in Maine, the Department is also legally required to avoid midstream adoption of new standards, guidance, and rules after a substantive review of a complex grid-scale wind energy development (such as the 30-page July 6, 2012 Staff Draft Analysis) has already occurred. This is particularly so when the Legislature has determined grid-scale wind energy facilities are an appropriate use, such as in Grand Falls Township where the Project is sited.

Penobscot Forest first entered into a Wind Energy Easement in Grand Falls Township on March 24, 2010 for the Project. Since then, Penobscot Forest has spent years and considerable resources with the Applicant in developing, designing, configuring, and substantially amending the Project to conform to the Wind Energy Act, the Site Law, and the Natural Resources Protection Act. In this proceeding, the Landowner and Applicant have relied on legal standards and the Department's review process in place well prior to July 6, 2012 when the Department

Staff's Draft Analysis issued, notwithstanding any subsequent efforts of the Commissioner or the Department to change the standardized process or add new requirements.

The Department's licensing review of the Passadumkeag Wind Project covers two markedly different periods and therefore essentially two different reviews: (1) the review period leading up to and including the July 6, 2012 Staff Draft Analysis that determined the Project satisfied all applicable standards; and (2) a post-July 6, 2012 time period when the Department changed its standardized approach and stepped through a series of approaches in a new exploration of scenic impact review, but without effectively using any new substantive technical evidence. It is clear from the Record that the evaluation and review in the first time frame conflicts with, and fails to support, the result reached during the 2nd period.

By July 6, 2012, the Department had all the record evidence and technical peer review evaluation it would essentially need, evidenced by the complete Draft Staff Analysis on all standards. Thereafter, with essentially no additional technical evidence or newly completed comprehensive peer review evaluation, the Department's post-July 6 review marks a turn away from the more traditional approach in a statewide licensing proceeding of relying on technical and peer-review evaluations, and instead towards relying upon policy shifts and popular sentiment. But, local sentiment and wind opponents are understandably focused on the overweighting of local scenic resources as being "regionally significant"¹ and a desire for the Department to give special attention to such locally prized resources.

As illustrated in the Chronology attached as Exhibit 1 (derived from the Record), the only new technically competent evidence since July 6 includes the Applicant's Supplemental Visual Impact Assessment and additional supplemental materials; evidence that supports the July

¹ See November 8 Commissioner's Decision, page 25 of 45. It should be noted that neither Chapter 315 nor WEA use the term "regionally significant" to describe the significance of scenic resources.

6 Staff Analysis finding of no “unreasonable adverse” scenic effects. Notably, there was no other VIA offered after July 6 in addition to or in opposition to the Applicant’s Saponac Pond analysis. The Wind Energy Act typically requires a well-supported VIA for technical analysis in order to support a given decision. *See* 35-A M.R.S. § 3452(4). The Department’s peer review consultant only issued Partial Review memoranda that again essentially supported the July 6 Staff Analysis as to Saponac Pond.²

Importantly, since July 6, 2012, the forest landowner community has observed a series of actions by the Commissioner and the Department Staff that seemed to take scenic impact review in new policy directions and to a series of different locations within the viewshed of the Project. These actions have signaled to the Landowner that this Project on its lands somehow merit special, unique, and different treatment when compared to scenic impact reviews by the Department in a long line of wind energy projects. Those prior reviews include Spruce Mountain, Record Hill, Rollins, Saddleback, and the Oakfield I and II wind energy projects; a detailed listing of these Projects and the number of turbines associated with each is attached as **Exhibit 2**. Only in the Department’s review of this Project on Penobscot Forest’s lands has it detoured in the final stage of a lengthy 9-month review to fit a new rationale to its “leaning denial” communicated by the Department to the Applicant on July 27 after the Commissioner’s site visit and chairing of the public hearing on July 12.

² The Partial Peer Review by LandWorks of the Applicant’s supplemental materials (the Department’s technical scenic impact peer reviewer) on September 7, 2012 found that overall visual impact on Saponac Pond was “medium.” Similarly, in an October 3, 2012 memorandum, LandWorks found that Saponac Pond “appears not to have a high level of use or visitation beyond the region and thus the project’s possible impacts will not affect a large number of individuals.” That memo further found Passadumkeag Mountain was neither identified as a Scenic Resource of State or National Significance (“SRSNS”) nor a tourism or recreational destination and thus it was “difficult, from a purely statutory perspective with regard to the visual assessment process required, to reach [the] conclusion” that there would be unreasonable adverse scenic impact.

The Landowner and Applicant, however, are entitled to the same fair and equal treatment and due process that the Department and Commissioner have accorded to prior wind energy project reviews. The Landowner authorized the use of its lands and supported development of the Project, understanding that the Legislature wanted wind projects sited in the expedited area. Now the Commissioner's decision seeks to change the Department's longstanding approach that adhered to the Wind Energy Act's distinct scenic standard and plainly stated criteria.

At the very end of the licensing process, the Applicant sought to address the shifting reasons stated by the Department for its Denial Decision. The Applicant several times submitted additional evidence, requested a complete peer review by the Department's independent expert, and, with other affected landowners, petitioned the Department for clarification of new policy directions set forth in memoranda.³ As the Record reflects, however, the Commissioner and the Department came to a point where they stopped evaluating and considering the Applicant's evidence.

Therefore, Penobscot Forest asks the Board to apply its legal and equitable review and decision-making powers to a limited but critical issue—specifically, the Commissioner's finding that this Project would have *unreasonable* adverse effect on the scenic resources of Saponac Pond. In asking the Board to review this limited issue, Penobscot Forest is not requesting a wholesale review of the Commissioner's entire decision of the entire Record. To the contrary, the Commissioner expressly found that the Project met all other applicable review standards.

The Board's consideration of this central point in this Appeal is further simplified by the fact that the area in which the Project is to be sited includes Passadumkeag Mountain, which has

³ A fundamental requirement of due process of law is notice reasonably calculated under all the circumstances to apprise interested parties of both the pendency and specificity of the proposed action and afford them a full opportunity to present their evidence and objections to the action and a reasonable time and opportunity to make that presentation.

not received an SRSNS designation and is not a tourist or recreational destination. Both of these resources (Saponac Pond and Passadumkeag Mountain), as well as the associated viewshed, fall within an actively managed industrial forest landscape.

The issue here presented has been submitted not only for the Board's review but also its decision on the merits. This is the case because the central issue presented is focused and discrete and can be decided on the Record. It is also the case because the Commissioner has departed from established procedures and standards in making the Saponac scenic impact decision.

In conducting its review, the Board's scrutiny of the Record will reveal the following:

- (1) A close evaluation of the objective evidence in the Record, detailed in the Saponac Pond matrix of scenic impact considerations attached as Exhibit 3, compels a determination, consistent with the findings of David Raphael of LandWorks and the Staff Draft Analysis of July 6, 2012 that, while there will be some adverse impacts to the Saponac Pond scenic resource, those impacts do not come close to presenting *unreasonable* adverse effects when viewed against the consistent path of the Department's prior scenic impact reviews of previously approved grid-scale wind energy facilities.
- (2) The rationale in the Commissioner's Order adopted local opinion of the resource and the Project's effects on the scenic resource without seeking further and complete technical peer review evaluation of the supplemental evidence in the Record; this conclusion is clearly evidenced by the Commissioner's disagreement with her own technical consultant's method and conclusions. See Commissioner's Decision at pages 24 through 26 of 45. However, that rationale of the Commissioner's Decision is inconsistent with (a) the objective evidence in the Record; (b) the standards of the controlling legal authorities (including WEA); and (c) the prior process approach and decisions of the Department in wind energy facility siting proceedings. These inconsistencies are highlighted in the Landowner's discussion of those deficiencies below.

We thank the Board for its careful consideration of this important request.

FACTUAL BACKGROUND & PROCEDURAL HISTORY

The Passadumkeag Wind Project consists of 14 turbines in Grand Falls Township totaling 42 MW. *Permit Application, Section I.* Further, in the view of the Department's scenic peer

review consultant, the turbines have been configured and arrayed in a manner designed to minimize the Project's scenic effects. *Review of Passadumkeag Wind Project Visual Assessment, prepared by LandWorks, June 19, 2012, at page 19.*

The Project area is owned by Penobscot Forest which manages its forest lands for multiple use. In addition to 50 camps on other lands along Saponac Pond, the Department's review concluded that the actively managed forest landscape of Penobscot Forest includes logging roads, clearcuts, other resource extraction activity, and two communication towers (a 574-foot radio tower owned by Bangor Baptist lit with 4 beacons and a 180-foot tower owned by the State of Maine). *Review of Passadumkeag Wind Project Visual Assessment, prepared by LandWorks, June 19, 2012, at pages 18-19.* Penobscot Forest owns the majority of Grand Falls Township, including most of the southern shoreline of Saponac Pond, much of the viewshed towards Passadumkeag Mountain, and Passadumkeag Mountain itself. *Permit Application, Section 2.*

The Department's Review Prior to July 6, 2012

The Department held the first of two public meetings on April 25, 2012, receiving numerous comments and questions from members of the public. During this time period, the Department also considered a report prepared by LandWorks, the Department's independent scenic expert that peer reviewed the Applicant's Visual Impact Assessment ["VIA"]. Notably, LandWorks performed several site visits and created its own independent VIA to complete its peer review. *See Review of the Passadumkeag Wind Project Visual Impact Assessment, Prepared by LandWorks, June 19, 2012, at page 14.*

The review of this Project was moving forward in typical and regular fashion. The Department had issued a July 6, 2012 Staff Draft Analysis that determined the Project complied

with all applicable licensing criteria and “would not have an unreasonable adverse impact on any SRSNS or unreasonable adverse effect on the continued use of SRSNS by a typical user”. *Staff Draft Analysis at p. 21 (July 6, 2012) (emphasis supplied)*. The Staff analysis found that “Saponac Pond is by no means a pristine water body, and the logging activity and existing mountaintop development with roads and radio towers contributes to the sense of the pond being in a developed area that has been used historically as a working landscape.” *See the LandWorks Review, June 19, 2012, at page 19; Staff Draft Analysis at p. 17 (July 6, 2012)*.

This July 6 finding was consistent with the Landowner’s intensive and sustainable management of its private multiple use forest lands, as well as the Department’s scenic impact finding in the Rollins wind project on Saponac Pond stating, “This pond is more developed than Number 3 pond, with camps located along the east, west, northeast and northwest shorelines of the pond.” *Rollins Order at p. 13, L-244-2-24-A-N/L-24402-TH-B-N/L-24402-IW-L-N (approval)*, attached as Exhibit 4.

Importantly, as of July 6 the Department had all the record evidence and technical peer review evaluation that it would essentially need and have in this entire licensing proceeding, as evidenced by the complete and comprehensive Draft Staff Analysis.

The Department’s Review Post-July 6, 2012

With essentially no additional technical evidence or completed and comprehensive peer review evaluation, the Department’s post-July 6, 2012 process departed from the established procedures and standards of the Department.

Notably, the Commissioner chaired the July 12, 2012 public meeting and also conducted her own site visit on that date, atypical and extraordinary actions by a Commissioner in a Department licensing review. In the July 12 public meeting, the Commissioner heard numerous

comments and received many written comments shortly thereafter. On July 27, the Department contacted the Applicant by phone and advised that it was now leaning towards a denial based on scenic impact, notwithstanding the Department's Staff Draft Analysis that determined the Project met all applicable standards.

The Robbins Lumber Conservation Easement

The Department issued an Intraoffice Memorandum to the Commissioner on September 18, 2012 (**Exhibit 5**) that determined the Robbins Lumber Conservation Easement near Niatous Lake was somehow a scenic resource of state or national significance ["SRSNS"], and required the Applicant to submit a supplemental VIA to address whether views from these Easement lands would be significantly compromised. At considerable expense, the Applicant did so reserving objection to this Conservation Easement being elevated to SRSNS status. Among other commenters on the September 18, 2012 Memorandum, James L. Robbins of Robbins Lumber objected to the action outlined in the Memorandum and stated "I hope that opponents and supporters alike will understand that property ownership comes with the rights and obligation to do what is best for the land. For Robbins Lumber Company, it was conservation; for Penobscot Forest, it is helping the State of Maine further its objectives of energy independence." *Robbins Lumber letter dated August 22, 2012, at page 3 (full letter attached as Exhibit 6)*. One day after the Applicant submitted its supplemental VIA, the Department reversed its prior determination on the Robbins Lumber Conservation Easement. *See Intraoffice Memorandum to the Commissioner (Oct. 11, 2012) (attached as Exhibit 7)*.

Saponac Pond Becomes the Ultimate Focal Point of the Department

Saponac Pond became the ultimate and final focal point of the Department's new scenic impact approach almost six months after the Passadumkeag Wind Project application was

submitted. To address this, the Applicant submitted supplemental materials regarding scenic impacts to Saponac Pond, including photo simulations and a video depicting photo simulations merged together for a 360-degree view from a point close to the center of the Pond.⁴

The Department's peer review expert, however, only did a partial review of the Applicant's supplemental materials regarding Saponac Pond. Landworks did so on October 9, 2012, the same day it had actually received these materials (as the Department delayed sending the Applicant's September 26 supplemental VIA until October 9). Although Saponac Pond had been identified as a critical issue to the Department, it never asked LandWorks to do a complete, comprehensive and final peer review of all of Applicant's technical submittals – notwithstanding the Applicant's request for LandWorks to do so. *See Email from Stantec to the Department (October 25, 2012.)*⁵

The Commissioner Issues a Final Decision

On October 23, 2012 the Applicant was informed its Project would be denied. The Applicant requested an extension to address the Department's concerns, which was denied. The Applicant then asked for a reconsideration of the Department's refusal to accept materials from the Applicant, which was also denied. The Commissioner then issued a Draft Denial Decision on October 31, 2012, which became the Final Decision on November 9, 2012.

In the Final Decision, the Commissioner determined the Passadumkeag Wind Project met all applicable standards under the Site Law, NRPA, and the Wind Energy Act, except for scenic impacts concerning Saponac Pond. Of importance to this Appeal, the Commissioner determined

⁴ Although the Department asked that the Applicant provide a photosimulation from the southern shore of Saponac Pond, vegetation at that location along the shoreline would have obscured photos/ views of Passadumkeag Mountain.

⁵ Mr. Barnes inquired in that email: "Is the DEP anticipating receiving Landworks comments prior to issuing a draft order? It would seem that comments of your expert on the issue the DEP has identified as a basis for denial would be critical information to have prior to reaching a final decision."

scenic impacts to all other SRSNS were acceptable [including Passadumkeag Marsh and Boglands, (a National Natural Landmark), the Old Tavern in Burlington (on the National Register of Historic Places), Niatous Lake (an "outstanding" lake under the 1987 Maine Wildlands Assessment Report and an SRSNS), Lower Pistol Lake, Spring Lake, and West Lake].

However, notwithstanding its lower objective rating than many of these other SRSNS, the Commissioner determined that the Project's scenic impacts significantly compromised Saponac Pond in a manner resulting in unreasonable adverse effects. Not surprisingly, the emphasis on expanding popular opinion on the Project in the post-July 6 review (away from the conclusions in the technical submissions and Draft Staff Analysis) resulted in a statement of the SRSNS significance of Saponac Pond as "regionally significant" and distorted the surrounding character as "undeveloped natural landscape". This post-July 6 review marks a turn away from Departmental reviews using technical submissions and peer-review evaluation towards a new "statewide" licensing proceeding evaluation of scenic impacts heavily influenced by public sentiment and the vigor of opponents.⁶

**PENOBSCOT FOREST IS AGGRIEVED
BY THE COMMISSIONER'S DECISION**

Penobscot Forest is the owner of 17,572 acres in Grand Falls Township, including a majority of the southern shoreline of Saponac Pond and the viewshed area towards Passadumkeag Mountain. *See Deed to Penobscot Forest dated January 20, 2005 and recorded at Book 9778, Page 244 of the Penobscot County Registry of Deeds.* A map of these lands is attached as **Exhibit 8** (ownership map). Penobscot Forest has continued the tradition of past owners (including International Paper) to actively manage these private working forest lands.

⁶ It seems a dangerous precedent for the Commissioner to drift into the role of a direct reviewer of public comment (as is typically done in the legislative or rule making framework) in the final stage of a quasi-judicial proceeding, particularly where the Commissioner makes the final licensing decision.

These lands are also managed for multiple use, including leases to camp owners and communication tower owners (including the State of Maine) and a continuation of the Maine tradition of managed public access on private forest lands through primary and secondary hauling roads and ATV and snowmobile trails.

Penobscot Forest conveyed a Wind Energy Easement in Grand Falls Township on March 24, 2010 for the Project. That initial Easement lays out not only the interest in real estate in order to conduct the Project, but also the substantial economic terms of the arrangement. That Easement has been amended by a First Amendment to Wind Energy Easement and that Easement Amendment is recorded at Book 12733, Page 348 of the Penobscot County Registry of Deeds.

Given all of these considerations, the Commissioner's Denial Decision will result in the loss of Landowner's property rights, the loss of revenue under the Wind Energy Easement, and will impede the development of other anticipated wind energy projects in Maine and on Landowner's forest lands.

Penobscot Forest is thus aggrieved by the Commissioner's process and permit denial.

STANDARD OF REVIEW

The Board conducts a "fresh" or *de novo* review of the record in any appeal regarding a license decision and does not provide any deference to the Commissioner's findings or conclusions of law. 06-096 CMR Ch.2, § 24. The Board instead conducts their own review of the record evidence, tests the record evidence against the applicable standards, and uses their own judgment and reasoning on whether a project satisfies the applicable regulatory standards.

THE PASSADUMKEAG WIND PROJECT
SATISFIES THE WIND ENERGY ACT SCENIC STANDARDS

I. THE WIND ENERGY ACT SCENIC STANDARD APPLIES TO THE PASSADUMKEAG WIND PROJECT

By enacting the Wind Energy Act, the Maine Legislature gave clear direction that grid-scale wind energy projects are allowed and appropriate land uses in the Expedited Wind Energy Area, including the area owned by Penobscot Forest where the Passadumkeag Wind Project is located.

Due to the unique characteristics of grid-scale wind energy facilities, the Wind Energy Act sets forth a distinct scenic impact standard:

Whether “the development significantly compromises views from a scenic resource of state or national significance such that the development has an unreasonable adverse effect on the scenic character or existing uses related to scenic character of the scenic resource of state or national significance.”

35-A M.R.S. § 3452(1).

The Wind Energy Act provides two important provisions that require a more limited review of scenic impacts by the Department, which are:

- (1) A determination that a wind energy development fits harmoniously into the existing natural environment is not required for approval. 35-A M.R.S. § 3452(1).
- (2) A finding that wind turbines are a highly visible feature on the landscape is not by itself a sufficient basis for a determination of an unreasonable adverse effect. 35-A M.R.S. § 3452(3).

The Wind Energy Act further specifies six criteria (Criteria A through F) against which a project must be evaluated. A listing of each of these evaluation criteria is provided in Exhibit 9 for the Board’s reference.

The Wind Energy Act thus provides (i) a specific scenic standard in which harmonious fit and high visibility are not relevant inquiries, and (ii) specific evaluation criteria to identify facts

in making a scenic impact determination. This standard and approach is distinct from other developments reviewed under NRPA and the Site Law that are subject to the traditional “harmonious fit” standard.

The rationale for a distinct scenic standard and accompanying evaluation criteria for grid-scale wind energy projects is based on Legislative policy to support development of these projects. The Maine Legislature recognized these projects will be highly visible on the landscape and likely inharmonious due to the location of adequate wind resources (e.g., higher elevations) and the size of such projects. The Maine Legislature also recognized the importance of developing Maine’s wind energy resource, as well as predictability and fairness in regulatory reviews of individual projects – and that the standard and review process must be fair and predictable for applicants and landowners whose property rights are affected by laws and regulations. Indeed, landowners are reluctant to make key investments on their properties without a predictable and fair regulatory environment.

II. THE DEPARTMENT HAS APPLIED A CONSISTENT APPROACH TO REVIEWING SCENIC IMPACTS UNDER THE WIND ENERGY ACT PRIOR TO THE PASSADUMKEAG WIND PROJECT

Evaluating scenic impacts has historically followed a consistent process (including the Passadumkeag Wind Project prior to and including July 6, 2012). Those reviews adhered to the distinct Wind Energy Act scenic standard rather than the strict “harmonious fit” standard applied prior to the Wind Energy Act, and relied on technical materials (VIAs and independent peer reviews) as competent proof.

Prior wind energy projects reviewed by the Department and this Board include Spruce Mountain, Rollins, Record Hill, Saddleback, and Oakfield I & II (all evaluated under the Wind Energy Act scenic standard and approved). Again, *see* Listing of Wind Energy Facilities

Previously Approved by the Department, Exhibit 2. In those proceedings, the Department received VIAs from applicants' scenic experts, subjected those VIAs to independent peer reviews by experts retained by the Department, and stayed within the confines of the Wind Energy Act scenic standards and criteria to make a determination. As with other highly technical areas, the Department traditionally and understandably placed great weight and reliance on its own independent scenic expert to correctly conduct fact-specific inquiries into each of the six evaluation criteria (Criteria A through F) in order to properly apply the "unreasonable adverse effect" Wind Energy Act scenic standard.

III. THE DEPARTMENT USED A DIFFERENT APPROACH TO THE PASSADUMKEAG WIND PROJECT

As detailed above, however, the Department's post-July 6, 2012 review departed from the traditional process.

The irregularities in the Department's post-July 6, 2012 review included: (i) a refusal to do the usual complete, comprehensive review of both the original and supplemental VIA materials submitted by the Applicant on an issue the Department deemed critical; (ii) a denial of requests by the Applicant for extensions and/or additional submittals to address the Department's concerns, notwithstanding the significant property rights at stake; and (iii) a departure from the traditional processes, practices, and evaluative approaches utilized in prior proceedings and in this Passadumkeag proceeding prior to and including July 6, 2012.

These irregularities are troubling given the significant amount of investment made by the Applicant and potential losses to the Landowner, and do not project the qualities of regulatory fairness and predictability, which are generally found in Department reviews, and which are essential to business investment in Maine.

Moreover, these irregularities contributed to erroneous findings and conclusions regarding Saponac Pond that are inconsistent with the record evidence and Wind Energy Act.

IV. THE COMMISSIONER ADOPTED ARBITRARY AND IMPROPER STANDARDS THAT ARE NOT CONSISTENT WITH THE WIND ENERGY ACT.

A review of pages 24 through 26 of the Commissioner's Final Decision demonstrates the findings and conclusions regarding Saponac Pond are not based upon competent proof in the record⁷ because they:

- (1) Applied a "harmonious fit" standard, which is essentially irrelevant under the Wind Energy Act;
- (2) Gave significant weight to the Project's wind turbines being "highly visible" on the landscape, which is also essentially irrelevant under the Wind Energy Act;
- (3) Considered local use and local views as determinative, thereby converting a "scenic resource visited primarily by people of local origin" to a "regionally significant" scenic resource, a finding and terminology that are outside the Wind Energy Act and Chapter 315;
- (4) Failed to properly consider the Wind Energy Act's purpose and the context of the Passadumkeag Wind Project, including the proximity of the Rollins Wind Project as a favorable factor in clustering wind energy projects on the landscape;
- (5) Resulted from significant irregularities when compared to all other Departmental review proceedings (Robbins Lumber Conservation Easement as a SRSNS; refusal to obtain critical independent peer review; and refusals to allow the Applicant to submit additional evidence); and

⁷It is puzzling how the Commissioner could reach a determination that is, in several respects, 180 degrees from the Department's Draft Staff Analysis based on the same essential record evidence. Indeed, the only additional items in the record subsequent to the July 6, 2012 Draft Staff Analysis were (1) numerous public comments, (2) a supplemental VIA and other supplemental evidence submitted by the Applicant (as requested by the Department), and (3) two partial review memoranda from the Department's scenic impact review consultant. Notably, none of this additional record evidence included scenic impact analyses that would support an "unreasonable adverse effect" finding as to Saponac Pond. Apart from public comments, the additional materials submitted by the Applicant's and Department's scenic experts demonstrate the Passadumkeag Wind Project met the Wind Energy Act scenic standard.

- (6) Considered Saponac Pond and its viewshed to be “undeveloped” and a “more natural setting”, which is contrary to the record evidence, the Department’s Staff Draft Analysis, and several findings of the Department in the Rollins Order.

The Commissioner’s Final Decision shows a scenic impact determination that considered “harmonious fit” and gave significant weight to record evidence demonstrating the Project’s turbines would be “highly visible” from Saponac Pond. The Wind Energy Act, however, states these are not relevant in making a reasonableness determination based upon record evidence identified within each evaluation criteria (Criteria A through F of 35-A M.R.S. 3452(3)). The Final Decision also shows the Commissioner inflated the scenic significance of Saponac Pond and misconstrued the potential effects the Project would have on scenic character and related uses on Saponac Pond. As a result, the Commissioner’s Final Decision was not supported by competent proof or the Wind Energy Act as to Saponac Pond.

A review of the record evidence within the framework of Criteria A through F of Section 3452(3) of the Wind Energy Act, however, compels a positive finding that the Project will not result in an unreasonable adverse effect on the scenic character and related uses on Saponac Pond.

V. THE COMMISSIONER’S DECISION IS NOT SUPPORTED BY THE RECORD EVIDENCE WHICH INSTEAD COMPELS A DETERMINATION THAT THE PASSADUMKEAG WIND PROJECT SATISFIES THE WIND ENERGY ACT SCENIC STANDARD

In this Appeal, the Board must apply the correct scenic standard under the Wind Energy Act to determine whether the Project has an unreasonable adverse effect based upon competent proof in the Record (and not “harmonious fit” or “high visibility” as determining factors).

As detailed below, and in the “Saponac Pond Scenic Evaluation Matrix” attached as Exhibit 3, the Record evidence compels a positive finding that the Passadumkeag Wind Project satisfies the scenic standard in the Wind Energy Act.

A. Criteria A: "Significance of Affected Resource"

The Commissioner determined low and almost exclusive local use to be irrelevant in evaluating the scenic significance possessed by Saponac Pond, and further interpreted local opinion of the resource's significance to mean Saponac Pond is a "regionally significant" scenic resource. *Final Decision at p. 24.* The Draft Staff Analysis and Department's own independent scenic expert, however, determined that Saponac Pond was of relatively low significance as an SRSNS.

Applying common sense and experience to the record evidence supports the evaluations of the Draft Staff Analysis and LandWorks. Saponac Pond has low use and is almost exclusively used by people in the local area. Saponac Pond is not designated as a "remote" great pond, where low use is expected in such undeveloped and hard-to-access resources. Just the opposite; Rout 188 and a public boat ramp provide substantial and ready access, but its use is nonetheless very light. These facts support a finding as to Saponac Pond of relatively low scenic significance as an SRSNS. Indeed, to have a more significant status, the Record would have to demonstrate more people visit and use Saponac Pond and travel great distances to use the Pond. The Record, however, contains no such evidence.

Chapter 315 (NRPA Scenic Impact Rules) reinforces this evaluation, which states "A scenic resource visited by large numbers of people who come from across the country or state is generally considered to have national or statewide significance. A scenic resource visited primarily by people of local origin is generally of local significance." 06-096 CMR Ch. 315, § 10.

B. Criteria B: "Existing Character of Surrounding Area"

The Commissioner attempts to justify denial of the Project on the basis that Saponac Pond is undeveloped and located in a purely natural environment. This evaluation, however, is not supported by competent proof.

The Record evidence shows Saponac Pond is in a developed area in the working rural landscape of Maine. Two communication towers exist on Passadumkeag Mountain: a 574-foot tower with 4 pulsating beacons and 180-foot tower used by the State of Maine. Moreover, in addition to the existing communication towers, the viewshed from Saponac Pond to Passadumkeag shows active and extensive timber harvesting activity and associated logging roads, clear evidence of an active working forest in the surrounding area.

The northeastern, eastern, western, and northwestern shorelines of Saponac Pond are developed with approximately 50 camps/year-round homes. Saponac Pond also has excellent accessibility, as there is a public boat launch on the Pond, and public access is also available from Route 188 that follows Saponac Pond's northern shoreline.

The Draft Staff Analysis and LandWorks understandably concluded that this Record evidence demonstrates Saponac Pond was neither in an undeveloped area nor in a purely natural landscape. As noted, Saponac Pond is not designated as a "remote" great pond. This conclusion is reinforced by the Rollins Wind Approval Order, which also concluded Saponac Pond had a developed character. *See Rollins Order at p.13, Exhibit 4.*

C. Criteria C: "Expectations of the Typical Viewer"

The Commissioner attempts to justify a denial by finding Saponac Pond is undeveloped and the Project would dramatically change the level of development viewed from the pond. The Record evidence, however, shows Saponac Pond is not in an undeveloped area, and that a strong

majority of users would return if the Project is built. Moreover, the fact that wind turbines are visible is not relevant in applying the Wind Energy Act scenic standard.

The Record evidence shows the expectations of the typical viewer of Saponac Pond relate to rest, relaxation, and general enjoyment of being outdoors in an uncrowded area. This indicates people do not primarily use Saponac Pond due to its scenic quality, but instead for other characteristics (e.g., bass and perch fishing, boating, and uncrowded surface water due to low use).

D. Criteria D: “Expedited Wind Energy Development’s Purpose and Context”

The Commissioner’s finding under Criteria D misses the point by only stating the purpose of the Project is to generate electricity. The Commissioner repeats her earlier findings that Saponac Pond is undeveloped, which relates to Criteria B “existing character of the surrounding area”, not Criteria D.

This Project is meant to provide renewable energy to further the State’s objectives of energy independence. As an expedited wind energy development project, the Legislature has already determined that the Passadumkeag Wind Project is allowed and an appropriate land use in the area surrounding Saponac Pond, including Passadumkeag Mountain. A wind project is viable on Passadumkeag Mountain because of the excellent wind source located above the mountain. At 42 MW of capacity, the Passadumkeag Wind Project will have a significant impact in helping Maine meet its wind energy goals.

Criterion D “context” of the project does not relate to the “surrounding” area that is already covered by Criteria B, but instead relates to how the Passadumkeag Wind Project fits into the overall context of the Wind Energy Act and other grid-scale projects.

In this regard, Passadumkeag Mountain is also located in a region where other wind energy facilities exist, namely Rollins, and is making maximum use of existing electrical infrastructure, dramatically decreasing its impact on the environment and improving service to local electricity customers. In this context, the Passadumkeag Wind Project helps cluster wind energy projects in specific regions of Maine and reduces the need for newer transmission lines, mitigating the level of disturbance that would exist for projects in remote locations.

E. Criteria E: "Extent, Nature, and Duration of the Public Use of the Scenic Resource; and the Effect on the Public's Continued Use and Enjoyment of the Scenic Resource"

The Commissioner's evaluation of the facts related to Criteria E shows a misunderstanding of one of its key elements. The Commissioner emphasizes that a low number of users enhances their enjoyment of the surrounding aesthetics. But, unless Saponac is a remote pond or otherwise protected, the low number of users of Saponac despite excellent access indicates a lack of significant impact on public use and enjoyment of this public resource.

The Record evidence shows Saponac Pond experiences a low number of users and is not a "remote" destination in an undeveloped landscape. Under the term "extent" relating to use in this criterion E, the low number of users means fewer people would potentially be impacted, which corresponds to lower potential scenic impact. In this regard, the Record indicates that, of the people that do use Saponac Pond, the vast majority (approximately 3/4) stated the Project would not affect their willingness to return. This is not surprising evidence since users of Saponac Pond are more focused on the pond and its shoreline for the predominant uses of the resource (e.g., boating and fishing) rather than views of the surrounding area for uses that do not occur for this resource (e.g., hiking trail on a ridgeline). Saponac Pond users are mainly

fishermen who have a specific purpose, there are few of them, they fish during specific times, and the user surveys indicate they will return.

The Commissioner evaluated these facts quite differently, finding a low number of users enhances their enjoyment of the surrounding aesthetics, and that low use does not diminish the importance of the people who use the pond.

Criterion E, however, again focuses on the extent, nature, and duration of use. In this regard, the number of people affected corresponds to the degree of potential scenic impact, especially since this is not a remote location because it is easily accessed by surrounding roads, towns, and public boat launch areas. Thus, in terms of scenic impact, the potential impact is to very few people, and a majority of people who actually use the Saponac Pond stated the Project would not affect their willingness to return.

F. Criteria F: "Scope and Scale of the Effect of the Views of the Generation Facilities, Including Number and Extent of Visible Facilities, and Effect of Prominent Features of the Development on the Landscape"

The Record evidence shows the Project will be highly visible on the landscape. Viewers on Saponac Pond will see 10-14 turbines from distances of 2.3 to 4.9 miles and at varying panorama angles from 31-62 degrees. The Commissioner evaluated these facts to result in a significant impact on the scenic character of Saponac Pond. High visibility itself, however, is not relevant or determinative under the Wind Energy Act scenic standard.

As noted, most of the users of Saponac Pond stated the Project would not affect their willingness to return, which correlates with other Record evidence that people use Saponac Pond for reasons that do not primarily depend on scenic quality (e.g., rest, relaxation, boating, and fishing). Moreover, the turbine array is not concentrated in one specific area of the viewshed in

a way that produces an irregular pattern, but is instead orderly (linear and singular) over approximately 4.5 miles.

* * *

Evaluating all of the record evidence through the framework of Criteria A through F in the same manner as the Department has done for other wind projects compels a determination that the Passadumkeag Wind Project satisfies the Wind Energy Act scenic standard.

Although the Passadumkeag Wind Project will be visible, the majority of users stated the Project would not affect their sense of enjoyment or willingness to return to Saponac Pond. Moreover, Saponac Pond is not an undeveloped or remote water body; it is not pristine. A low number of people use Saponac Pond, and those uses are not primarily associated with scenic quality.

A proper evaluation of the facts in relation to Criteria A through F shows the Passadumkeag Wind Project has a moderate or medium impact on Saponac Pond, a conclusion supported by the Draft Staff Analysis and the Department's independent scenic impact expert. A moderate impact does not constitute an "unreasonable adverse effect." The Passadumkeag Wind Project therefore satisfies the Wind Energy Act scenic standard.

REQUEST FOR RELIEF

For each of the above reasons, Penobscot Forest respectfully requests that the Board REVIEW the Record of this proceeding (and grant the Appellant an oral argument in this Appeal) and, upon completion of the review, REVERSE the Commissioner's November 9, 2012 denial based solely on Saponac scenic impact, AFFIRM the Commissioner's findings that the Passadumkeag Wind Project has satisfied all other applicable standards of the Wind Energy Act,

the Site Location of Development Act, and the Natural Resources Protection Act, and ISSUE an Approval Order.

Respectfully submitted this 10th day of December, 2012.

PENOBSCOT FOREST, LLC

By Andrew Hamilton (WVF)
P. Andrew Hamilton, Esq.
Bar Registration No. 2933

By Jonathan A. Pottle (WVF)
Jonathan A. Pottle, Esq.
Bar Registration No. 4330

EATON PEABODY
Bank of America Building
80 Exchange Street
P.O. Box 1210
Bangor, Maine 04402-1210
Attorneys for Penobscot Forest, LLC

Penobscot Forest's Exhibits 1, 2, and 3 were not allowed by the Board Chair.

- Exhibit 1: Chronology
- Exhibit 2: Listing of Wind Energy Facilities Previously Approved by the Department
- Exhibit 3: Saponac Pond Matrix

EXHIBIT 4

ROLLINS DECISION EXCERPT



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

EVERGREEN WIND POWER III, LLC) SITE LOCATION OF DEVELOPMENT ACT
Lincoln, Lee, Winn, Burlington,) NATURAL RESOURCES PROTECTION ACT
Mattawamkeag, Penobscot County) WATER QUALITY CERTIFICATION
ROLLINS WIND PROJECT)
L-24402-24-A-N (approval))
L-24402-TH-B-N (approval))
L-24402-IW-C-N (approval)) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. § 481 et seq. and 480-A et seq., 35-A M.R.S.A. § 3401, et seq., and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of EVERGREEN WIND POWER III, LLC with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: Evergreen Wind Power III, LLC (applicant) proposes to construct a 60-megawatt (MW) wind energy generation facility known as the "Rollins Wind Project" in the towns of Lincoln, Mattawamkeag, Lee, Burlington and Winn, Maine. The proposed wind generation facility includes the construction of two wind turbine clusters; the construction and upgrade of two permanent access roads, 40 turbine pads, 4 permanent meteorological towers, a 43,200 square foot electrical substation, a 34.5 kV overhead collector line among the turbines, a 34.5 kV, 5.4 mile connector line between the North and South portions of the project, a 115 kV, 8.8 mile transmission line and a 9,000 square foot Operations and Maintenance (O & M) facility. The proposed Rollins Wind Project is an expedited wind energy development in accordance with Title 35-A § 3451 (4).

(1) Wind turbine clusters. The wind energy facility will consist of 40 General Electric 1.5-MW turbines located in two clusters; one (1) on Rollins Mountain (Rollins North), which is located in the towns of Lincoln and Lee and consists of an approximately three-mile long ridge line containing the summit of Rollins Mountain, and one (1) on Rollins South, which is located in the towns of Lincoln and Burlington and contains six distinct peaks across a four-mile ridgeline. The applicant proposes to construct approximately 18 turbines in the Rollins North cluster and approximately 22 turbines in the Rollins South cluster. The project design includes 41 potential turbine locations to allow for flexibility in final project construction; however, only

(B) Saponac Pond. Saponac Pond is located at the edge of the 8-mile radius of the proposed project site. The shoreline of Saponac Pond contains land uses and landscape features similar to Number 3 Pond, as it is also wooded with a mix of deciduous and coniferous vegetation, with the exception of the low growing vegetation that is found in the wetland areas that are located along the southeastern, southwestern and a narrow portion of the northern shoreline. This pond is more developed than Number 3 Pond, with camps located along the east, west, northeast and northwest shorelines of the pond. Development along a low hillside above the eastern shore of the lake is also visible from the shoreline of the pond, and there is a public boat launch located on the northwest shoreline. The boat launch is oriented in an easterly direction; therefore, none of the wind project will be seen from the launch.

The wind turbines located on Rollins North will be visible from several vantage points within the view-shed of Saponac Pond. The turbines that could possibly be seen from this pond include turbines S-20 and S-21 at the southern quarter of the pond, turbines S-17, S-18, and S-19 at the northern half of the pond, and turbine S-16 at the northern quarter of the pond. Portions of the rotor/hub for turbines S-14 and S-15 could also potentially be visible within the northern quarter of the pond. The applicant states that given the distance between the proposed project and the pond, the views of the proposed turbines are distant and the turbines will not dominate the view, nor will they significantly alter the visual quality or the ambience of the pond. Additionally, most, if not all of the private camps on the pond are either located on the eastern or western shoreline, and both of these shorelines are located outside of the view-shed area of the turbines.

The assessment of visual impacts for both of the identified scenic resources of state or national significance also took into account other factors that influence view, such as the cloud cover and extent of the viewing period. The applicant states that National Weather Service data indicates that, in a typical month, approximately 13 to 14 days contain sufficient cloud cover within the region to obscure or otherwise lessen the influence of the turbines from within the view-shed. The applicant contends that based on these facts, combined with the long distances to the turbine sites from these two (2) waterbodies, that the scale of the turbines when viewed from that distance as well as the overall orientation of the developed areas on the resources, that the proposed project should not result in an unreasonable adverse effect on the scenic values and existing uses related to these two great ponds.

(C) Mallet Hall, the Abial Cushman Store (Lee Forest Grange), the Old Tavern, and the George Smith Homestead. All of these properties are located between 3.6 and 7+ miles from the nearest proposed wind turbine. The structures are primarily wood frame public or private structures located within the village settings of Lee and Mattawaumkeag. The applicant did not produce visual simulations for these locations based on the finding that no portion of the proposed wind project will be visible from these locations due to screening vegetation and intervening

EXHIBIT 5**DEPARTMENT INTRAOFFICE MEMORANDUM TO THE
COMMISSIONER SEPTEMBER 18, 2012**

INTEROFFICE MEMORANDUM

TO: PATRICIA AHO
 FROM: HEATHER PARENT
 SUBJECT: PASSADUMKEAG WIND PARK, LLC NRPA PERMIT APPLICATION
 DETERMINATION OF IMPACT ON SCENIC CHARACTER AND RELATED EXISTING USES
 DATE: 9/18/2012
 CC: JAMES BEYER, MARK MARCHERUM, MARK BERGIERON

The Department is responsible for making findings regarding the effect of an expedited wind energy development on scenic character and existing uses related to scenic character, including whether the development significantly compromises views from a scenic resource of state or national significance. As a result of the public input process, it was brought to the Department's attention that a 20,000 acre conservation easement exists on a parcel within 8 miles of the proposed project. As a result, it is necessary to determine whether the identified conservation easement is a "scenic resource of state or national significance" as that term is defined by law.

35-A MRSA §3451(9) defines "scenic resource of state or national significance" to mean "an area or place owned by the public or to which the public has a legal right of access that is:

- A. A national natural landmark, federally designated wilderness area or other comparable outstanding natural and cultural feature, such as the Orono Bog or Meddybemps Heath; ..."

The plain language of the easement establishes that the public has a legal right to access the land at issue.

The applicant has argued that the law provides an exclusive list, and that the phrase "or other comparable outstanding natural and cultural feature" should not be broadly interpreted, in part because the examples of the Orono Bog and the Meddybemps Heath are national natural landmarks. However, if the intent was to include only national natural landmarks and federally designated wilderness areas, then the addition of "or other comparable outstanding natural and cultural feature(s)" in the definition would be unnecessary. Because the Department is not permitted to conclude that the addition of language in any statute is unnecessary, it must conduct a reasonable evaluation of the meaning of the criteria.

The question becomes, then, whether the easement established under the Forest Legacy Program is "comparable" to a national natural landmark or a federally designated wilderness area. When land is designated as a national natural landmark, the landowner must agree to preserve the significant natural values of the site or area. Federally designated wilderness areas are to provide values such as "solitude or a primitive and unconfined type of recreation," as well

as "ecological, geological, or other features of scientific, educational, scenic, or historical value." The Department must therefore evaluate whether the land at issue is a natural or cultural feature comparable to areas under the other two programs.

In this particular application, the easement is not simply an easement placed on a portion of land by a well-meaning landowner, but the land was intentionally encumbered by an easement pursuant to the Forest Legacy Program (a Federal program, administered by the Maine Forest Legacy Program). The purposes of the easements were to effect the purposes of the Forest Legacy Program, and included not only the prohibition of development, but also to protect a "wide array of public values" including, but not limited to, all manner of public recreation and "nature observation." (March 30, 2012 letter from Kathy Eickenberg of Maine Department of Conservation to Maine Landowners or Land Conservation Organizations). Access for "wildlife watching by the general public" is one of the criteria, along with the criteria that the land should be protected from non-forest use. Land does not simply get included in the Forest Legacy Program by conveyance by an interested party. An established committee solicits applications, ranks the applications regarding the fit to the values and goals necessary for the program, and makes determinations. Because acquisition of easements utilizes federal funds, the ranking process and guidance must be strictly adhered to. In fact, since the Maine Forest Legacy Program is a subset of the Federal Forest Legacy Program, it must be fully compliant with federal guidance on the use of legacy dollars. All steps completed by the Committee are completed through a public process, and the meetings are public meetings and in a means that ensures the public process necessary to utilize legacy dollars.

Land under the Forest Legacy program is intended to be protected from non-forest use (development not related to forestry), and must include not only protection and conservation of the natural resources, but also opportunities for public access to appreciate the natural values of the site. Based upon an evaluation of the Forest Legacy Program, and a comparison of the lands protected under that program to the lands protected under the programs that designate national natural landmarks and federally designated wilderness areas, the Department concludes that the land under the Forest Legacy Program (the Robbins easement) is comparable to a national natural landmark or federally designated wilderness area, and therefore is a scenic resource of state or national significance. As such, it must be part of any visual impact assessment for the proposed project.

EXHIBIT 6
ROBBINS LUMBER LETTER
DATED AUGUST 22, 2012

ROBBINS LUMBER, INC.

EST. 1891

MANUFACTURERS WHOLESALERS

EASTERN WHITE PINE

ISO 9001:2008 CERTIFIED

LONG LUMBER
PINE CUT-UP STOCK
SHAVINGS

BANDSAW MILL
PLANING MILL
DRY KILNS

Patricia Aho
Commissioner, Maine DEP
17 State House Station
Augusta, Maine 04333-0017
Patricia.Aho@maine.gov
VIA EMAIL

August 22, 2012

Re: Passadumkeag Windpark – Comments on Application

Dear Commissioner Aho,

My name is Jim Robbins, and I am one of the owners of Robbins Lumber Company. Please accept these comments into the record on the pending Passadumkeag Windpark LLC application.

I support the proposed Passadumkeag Windpark and I object to people using the Robbins Lumber Company conservation easement around Nicas Lake as the basis for their opposition.

I come from a long line of landowners. Robbins Lumber is a fifth-generation, family-owned Maine company and Maine's timberlands are very important to me and my family. Equally important, however, are the principles, rights and values which underlie ownership of property here in Maine. In my view, owning land means that I can use my land, within the boundaries of the law, as I see fit. For example, I can use my land for forestry and conservation, and another landowner, Penobscot Forest, can use its land for forestry and wind power generation. The opposite is true as well. I can no more tell Penobscot Forest that it must conserve its property than it can tell me to build wind turbines on mine. Land ownership comes with a unique level of autonomy which I wholeheartedly support and value.

Please consider the consequences of undermining that autonomy. Consider what would happen if my company's decision to place a conservation easement on its property is interpreted by DEP or the public as requiring other landowners to make the same choice for their property. Those landowners would lose the right to make legal use of the property as they see fit. Perhaps no one would enter into conservation easements because they would want to respect others' property rights in the same way they would want theirs respected. Perhaps everyone would develop their property immediately; just to ensure others wouldn't prevent them from doing so in the future. Landowners would start asserting that they have rights in other peoples' property, even though they never paid for those rights. Whatever the

result, it would erode the meaning behind the honored tradition of land ownership in Maine. If people don't want Passadumkeag Mountain to be developed, they should buy it. Only then would they would have the right to make that decision.

My company made the conscious decision to put a large parcel of its property into conservation because it was exercising its fundamental right to decide the fate of the property it owns. The Company put the land into conservation because of the inherent value of the property and that value alone. There was never any assumption or belief that land outside the easement's boundaries would remain "forever wild." I never even considered the possibility that by conserving my own land I would in some way be affecting my neighbors' land and its development potential. Robbins Lumber Company never thought it owned or controlled the view of parcels owned by others, even when the view is from our property. The condition or use of the surrounding land never entered in our calculus when Robbins Lumber Company negotiated the easement. Furthermore, no one ever proposed to purchase additional easements or property rights from other landowners whose property was visible from the easement area. The value of the conservation easement is and was fully realized by the protection of the land within its boundaries and no other land.

Opponents to the Passadumkeag Windpark have unfortunately manipulated the language of the conservation easement to support their own cause; therefore I would like to explain the process that resulted in classifying certain areas of the easement as Special Value Areas and Visually Sensitive Areas to alleviate any confusion. Those areas were classified as Special Value Areas and Visually Sensitive Areas to ensure that no actions were taken on the Robbins Lumber Company property which would disturb those values. Those parcels of land were classified to assist in identifying the use limitations across a very large parcel of land. They were not classified to suggest that their value or their purpose was to preserve everything a person could see from there, or to prevent others from developing those visible areas. To do so would completely contradict basic principles of property ownership. In this circumstance, people want what they cannot have. They want the unilateral ability to prevent legal and reasonable development on someone else's property. Those individuals simply don't have that right and won't have that right until that right has been bought and paid for.

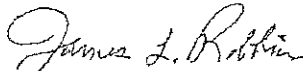
Opponents have also suggested that the easement should be considered a Scenic Resource of State or National Significance. No one has ever proposed that to me, nor have they proposed that the area be listed as a national natural landmark or a federally designated wilderness area, or anything equivalent that might result in the easement area being considered such a resource. I have not participated in any discussion that would lead me to believe that it is appropriate to do so. And, to be completely clear, if this type of designation were ever suggested, I would strongly oppose it. Even if the land were a specially designated resource (which it is not), the view from almost all of the easement area is from a distance of 7 or 8 miles, and only a few locations have a direct view of Passadumkeag Mountain.

In order for Maine to attract, keep and support businesses, companies need to be able to rely on Maine's statutes and regulations as meaning what they say. Companies need to be able to rely on the permitting process as being transparent, as being straightforward, and as having a "bar" that doesn't keep moving. For the companies that are already here, including my own, we need to be allowed to use

our property in ways that are compatible with and help to financially support the thriving forest products and wind energy industries in Maine.

I support the Passadumkeag Windpark project and I do not believe it affects or jeopardizes the scope or intent of the Robbins Lumber Company easement. I hope that opponents and supporters alike will understand that property ownership comes with the rights and obligation to do what is best for the land. For Robbins Lumber Company it was conservation; for Penobscot Forest it is helping the State of Maine further its objectives of energy independence.

Sincerely,



James L. Robbins

CEO Robbins Lumber, Inc.

EXHIBIT 7

**DEPARTMENT INTRAOFFICE MEMORANDUM
DATED OCTOBER 11, 2012**

 INTEROFFICE MEMORANDUM

TO: PATRICIA AHO
 FROM: HEATHER PARSONS
 SUBJECT: PASSADUMKEAG WIND PARK, LLC NRPA PERMIT APPLICATION
 RESPONSE TO ADDITIONAL QUESTIONS RELATED TO IMPACT ON SCENIC CHARACTER AND
 RELATED EXISTING USES
 DATE: 10/11/12

This memorandum is intended to respond to questions you have posed to me regarding the memorandum provided to you on September 18, on the Passadumkeag Wind Park application.

The analysis I provided in the 9/18 memo centered around whether the land (or feature) encumbered by the Robbins Easement was "comparable to" a "national natural landmark" or a "federally delegated wilderness area."¹ In order to provide you with the additional analysis you requested I have reviewed factual information specific to this parcel and the easement that encumbers it.

Critical to an analysis of comparable features is (1) the identification of the feature(s) at issue, and (2) an evaluation of whether the feature(s) rank high on the elements, uses and values that are comparable to the National Natural Landmarks or Federally Designated Wilderness Areas (hereinafter "NNL/FDWA").²

As stated in the 9/18 memo, when land is designated as a National Natural Landmark, the landowner must agree to preserve the "significant natural values" of the site or area, and federally designated wilderness areas are to provide values such as solitude or a primitive and unconfined type of recreation," as well as "ecological, geological, or other features of scientific, educational, scenic, or historical value." These are values and features that should be considered when making a determination of comparability.

When determining whether a specific parcel of land, such as a Forest Legacy property, is comparable to the NNL/FDWA, the specific features of the land in question must be considered.³

¹ The portions of the 9/18 analysis related to public access and the public process (two key aspects of a national natural landmark or a federally delegated wilderness area) won't be addressed in this supplemental memorandum.

² Merely because a Forest Legacy Easement is contained on a property or a property receives federal funding does not alone invoke the comparable features analysis. Nothing in this memorandum should be construed to mean that all Forest Legacy Easement must be analyzed for comparable features.

³ The question before the Department was whether the Robbins Easement, which is an easement established under the Forest Legacy Program, contained an outstanding natural and cultural feature that is comparable to NNL/FDWA lands. For this reason, all discussion in the 9/18 memorandum and this follow-up memorandum relates to whether the land subject to this particular easement, established under the Forest Legacy Program, contains "comparable features" as that

The purposes underlying the protection property, in comparison to the values of NNL/FDWA programs should also be considered. The way the specific values of the parcel as a whole were ranked for those values (under the Forest Legacy program), as compared to the NNL/FDWA values, informs this evaluation.

With respect to the question regarding the ranking of values under the Forest Legacy program, the parcel in question was selected as a Forest Legacy site due to the threat of conversion to non-forestry-related activities, and 19,380 acres of the 22,305 acre parcel were specifically set aside to be used as commercial forest land. While there are other values taken into consideration for designation in the Forest Legacy program, in the case of most such easements and in particular the Robbins easement in question, the primary values at issue are identified as protecting wildlife habitat and commercial forest management activity. Although public access and recreation are ancillary values for the easement, those values do not appear to be of primary focus and therefore, this particular property does not appear to be land comparable to those lands identified in NNL/FDWA lands.

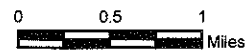
Turning to the specific features protected in the Robbins easement, the Purpose of the Forest Legacy program easement in question is listed as to: (a) continue the Property's availability for long term forest management, including commercial timber production, (b) protect and conserve the undeveloped character and the natural and ecological features of the Property, which provide important wildlife and fisheries habitat and help ensure the quality of the water in Nicasious and West Lakes, and (c) ensure the Property's availability and scenic enjoyment for traditional outdoor recreation and use by the general public. However, every portion of the entire parcel of land does not serve all three purposes. As stated above, 19,380 acres of the 22,305 acre parcel was specifically set aside to be used as commercial forest land. Only small portions of the property are not treated as Forest Management Areas. Because the value placed on this easement by the Forest Legacy Program is primarily commercial forestry, and because other values are ancillary to that purpose, we conclude that the property in question is not comparable to NNL/FDWA.

Based upon this further consideration of facts specific to this property, the Department concludes that the features within the Robbins Easement are not comparable to the NNL/FDWA, and do not have to be evaluated as part of a visual impact assessment for the project.

term is used in the Expedited Permitting of Grid-Scale Wind Energy Development Law. No other comparable provisions of Maine law have been considered in this analysis, nor should this analysis be utilized to respond to other scenic impact standards contained elsewhere in Maine law. All discussion in both the 9/18 memo and this memo relate to the specific property in question and the specific provisions of law implicated. The Department may consider rulemaking pursuant to the Wind Energy Development Law, 35-A MRSA §3451(9)(A), scenic resources considered for wind energy development application or the Department may seek clarity from the Legislature regarding the applicability of 35-A MRSA §3451(9)(A). The information provided to the Department today, however, is sufficient for the evaluation of comparability of the property in the Robbins Easement that was established under the Forest Legacy Program.

EXHIBIT 8
PENOBSCOT FOREST OWNERSHIP MAP

6666



- Legend -**
- | | | |
|----------------|----------------|----------------|
| Crossing OUT | Land Ownership | Primary Road |
| Gate: Closed | Lake | Secondary Road |
| Blocked Access | Wetland | Winter Road |
| Lease | Gravel Pit | Powerline |
| | Camp Lease | Streams |

TOWN: GRAND FALLS TWP
COUNTY: PENOBSCOT
STATE: ME



EXHIBIT 9
WIND ENERGY ACT EVALUATION CRITERIA

Wind Energy Act Evaluation Criteria

[35-A M.R.S. § 3452(3)]

In making its determination pursuant to subsection 1, and in determining whether an applicant for an expedited wind energy development must provide a visual impact assessment in accordance with subsection 4, the primary siting authority shall consider:

A. The significance of the potentially affected scenic resource of state or national significance;

B. The existing character of the surrounding area;

C. The expectations of the typical viewer;

D. The expedited wind energy development's purpose and the context of the proposed activity;

E. The extent, nature and duration of potentially affected public uses of the scenic resource of state or national significance and the potential effect of the generating facilities' presence on the public's continued use and enjoyment of the scenic resource of state or national significance; and

F. The scope and scale of the potential effect of views of the generating facilities on the scenic resource of state or national significance, including but not limited to issues related to the number and extent of turbines visible from the scenic resource of state or national significance, the distance from the scenic resource of state or national significance and the effect of prominent features of the development on the landscape.

A finding by the primary siting authority that the development's generating facilities are a highly visible feature in the landscape is not a solely sufficient basis for determination that an expedited wind energy project has an unreasonable adverse effect on the scenic character and existing uses related to scenic character of a scenic resource of state or national significance. In making its determination under subsection 1, the primary siting authority shall consider insignificant the effects of portions of the development's generating facilities located more than 8 miles, measured horizontally, from a scenic resource of state or national significance.